EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PIZZAROTTI IBC, LLC, Plaintiff, - against - MICHAEL MASTERS, Defendant.	Index No. 654476/2017 Date Purchased: 6/26/17 **AMENDED SUMMONS** Plaintiff designates New York County as the place of trial. The basis of venue is: Plaintiff's Principal Place of Business

To the above-named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: July 11, 2017

PECKAR & ABRAMSON, P.C.
PIZZAROTTI IBC, LLC

By: ______________________
PAUL MONTE
Attorneys for Plaintiff
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Defendant's Address:

Michael Masters
99 Primrose Street
Katonah, NY 10536

#142363.v1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PIZZAROTTI IBC LLC

Plaintiff,

- against -

MICHAEL MASTERS,

Defendant.

Index No. 654476/2017

AMENDED COMPLAINT

Plaintiff, Pizzarotti IBC LLC ("Pizzarotti"), by its attorneys, Peckar & Abramson, P.C., for its Amended Complaint against defendant Michael Masters hereby alleges as follows:

1. This action arises as a result of the theft and misuse of proprietary and confidential business documents and information by defendant Michael Masters ("Masters") from his former employer, Pizzarotti IBC LLC, which he then shared with his subsequent employer, X-treme Concrete, Inc. ("Xtreme"). Masters has and is utilizing plaintiff's proprietary and confidential documents and information to, among other things, assert unfounded claims against Pizzarotti on behalf of Xtreme; extort money from Pizzarotti; and otherwise damage Pizzarotti. Pizzarotti seeks compensatory and punitive damages, injunctive relief, attorneys' fees, costs and other appropriate relief.

2. Plaintiff was and is a Delaware limited liability company duly authorized to conduct business in the State of New York.

3. Masters is a former employee of plaintiff.

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4. In early 2016, prior to Masters' separation from Pizzarotti, Pizzarotti was engaged to construct a new condominium building known as Jardim and located at 527 W. 27th Street in New York, New York (the "Project").

5. In April of 2016, Pizzarotti retained Xtreme as a concrete subcontractor to complete the concrete foundation and superstructure at the Project.

6. Xtreme failed to perform its duties under its subcontract, Xtreme abandoned its work repeatedly with no explanation and thereby causing losses and extra expenses to Pizzarotti. The work that was completed by Xtreme was deficient, nonconforming and delayed without excuse.

7. As a result of Xtreme's breaches, on March 29, 2017, Pizzarotti notified Xtreme that its subcontract was being terminated for cause.

8. During the course of Xtreme's work and until the time his employment with Pizzarotti ended in late 2016, defendant Masters was employed by Pizzarotti as a Project Executive on several construction projects in New York City, including the Project on which Xtreme was a subcontractor.

9. Masters' duties as Project Executive included managing subcontractors; negotiating contracts; estimating; bidding; profit/loss of assigned projects; supervision of project management staff; approval of subcontractor awards and payments.

10. Masters' position allowed him access to Pizzarotti's confidential and proprietary documents and information pertaining to clients, contracts and construction practices, among other things. In particular, he had access to confidential and proprietary information relating to Pizzarotti's hiring and use of Xtreme on the Project.

11. As a condition of his employment, Masters agreed to strict confidentiality rules and agreed to protect proprietary and confidential company information, including as set forth in the Pizzarotti Team Member Handbook ("Pizzarotti Handbook"). Defendant Masters executed an acknowledgment of these company rules contained in the Pizzarotti Handbook on or about May 26, 2015.

12. On November 23, 2016, Masters and Pizzarotti entered into a Severance Agreement and Release of Claims ("Severance Agreement"). Pursuant to the Severance Agreement, Masters' termination became effective on October 24, 2016.

13. Masters agreed to abide by the terms of the Severance Agreement in exchange for certain salary and benefits as set forth in the Severance Agreement.

14. Pursuant to the Severance Agreement, Masters agreed that he would not "issue any communication…that… encourages any adverse action against Pizzarotti…"

15. Importantly, the Severance Agreement contained a strict confidentiality provision which provided as follows:

> **Confidentiality**. You agree not to disclose, nor use for your benefit or the benefit of any other person or entity, any information received in connection with Pizzarotti IBC which is confidential or proprietary and (i) which has not been disclosed publicly by Pizzarotti IBC, (ii) which is otherwise not a matter of public knowledge or (iii) which is a matter of public knowledge but you know or have reason to know that such information became a matter of public knowledge through an unauthorized disclosure. Proprietary or confidential information shall include information the unauthorized disclosure or use of which would reduce the value of such information to Pizzarotti IBC. Such information includes, without limitation, Pizzarotti IBC's client lists, its trade secrets, any confidential information about (or provided by) any client or prospective or former client of Pizzarotti IBC, information concerning Pizzarotti IBC's business or financial affairs, including its books and records, commitments, procedures, plans and prospects, products developed by Pizzarotti IBC, or current or prospective transactions or businesses of Pizzarotti IBC and any

> "inside information." You hereby confirm that you have delivered to Pizzarotti IBC and retained no copies of any written materials, records and documents (including those that are electronically stored) made by you or coming in to your possession during the course of your employment with Pizzarotti IBC which contain or refer to any such proprietary or confidential information. You further confirm that you have delivered to Pizzarotti IBC any and all property and equipment of Pizzarotti IBC, including laptop computers, etc., which may have been in your possession.

16. The Severance Agreement also requires that Masters not "assist or otherwise participate willingly or voluntarily in any arbitration or lawsuit which relates to any matter that involves Pizzarotti IBC..."

17. Pizzarotti has legitimate, protectable business interests which justify the foregoing restrictions including protection of Pizzarotti's trade secrets, protection of valuable confidential business information, client information, the preservation of Pizzarotti's goodwill in the construction industry, as well as information regarding the accounting of payments due and the retention and termination of subcontractors.

18. During Masters' employment at Pizzarotti, he had access to proprietary data, and confidential documentation and information.

19. On information and belief, Masters improperly accessed and copied Pizzarotti confidential and proprietary documents and information for personal gain during and after his employment.

20. Immediately following the separation of his employment at Pizzarotti, Masters commenced employment at Xtreme and worked on behalf of Xtreme on the Project, thus dealing on behalf of Xtreme with his former employer Pizzarotti.

21. On information and belief, before the separation of his employment at Pizzarotti, Masters conspired with Xtreme to leave his employment at Pizzarotti,

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commence working for Xtreme, and use the information he obtained as an employee of Pizzarotti in order to harm Pizzarotti in various ways, including in relation to a contract dispute between Xtreme and Pizzarotti arising out of Xtreme's work at the Project.

22. On March 29, 2017, after Masters left Pizzarotti's employ and after commencing employment with Xtreme, Xtreme made baseless and excessive claims for additional payments, including a demand for $3,312,348.00 allegedly resulting from alleged delays on the Project. Xtreme wrongly claimed that delays by the designer were impacting its work.

23. In support of its groundless claim, Xtreme included Pizzarotti's proprietary and confidential documents and information including correspondence with the design team and the owner of the Project.

24. On information and belief, this information was improperly provided to Xtreme by Masters. The emails included in Xtreme's claim for extra costs bear Master's name thus identifying Masters as the individual who printed and copied the emails in question. Xtreme has no independent source for obtaining these communications. Masters was not permitted to utilize Pizzarotti's communications in that way and is strictly forbidden from assisting Xtreme in making an adverse claim.

25. Defendant is attempting to capitalize on insider communications to bolster a non-existent and concocted claim by his new employer, and is actively causing injury to Pizzarotti's business interests.

26. On April 4, 2017, Xtreme filed a groundless lien against the Project for the exorbitant amount of $7,972,000.00, which Pizzarotti was required to discharge by the

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posting of an appropriate lien discharge bond pursuant to its independent obligations to the Project owner.

27. Masters was a senior employee with insider knowledge of Pizzarotti's confidential and proprietary information. Masters misused and misappropriated Pizzarotti's proprietary information including company emails and other communications.

28. Masters then passed off the proprietary information to Xtreme in violation of his duties to Pizzarotti, including the duty of loyalty, the terms of the Severance Agreement and the Pizzarotti Handbook, and applicable law.

29. Defendant Masters seeks to wrongly profit from Pizzarotti's confidential and proprietary communications by using such information to buttress an unfounded and exaggerated claim for additional expenses.

30. Pizzarotti became aware of Master's actions when it was advised by the owner of the Project that Pizzarotti's confidential communications and other information had been used in Xtreme's claim for additional payments. Masters has damaged Pizzarotti's business relationship with the owner of the Project.

31. Pizzarotti has sustained and will continue to sustain damages as a result of diminished reputation and goodwill in the construction industry due to Masters' breaches of confidentiality and other acts or omissions to act.

32. Pizzarotti will be required to incur significant costs to repair and ensure the integrity of its databases and servers by updating employee access and taking other necessary corrective access to avoid further invasion of its proprietary and confidential information.

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33. Masters' actions constitute a breach of his employment obligations and the Severance Agreement. Pizzarotti seeks revocation of the Severance Agreement, cessation of any further payments and a claw back of any and all payments to Masters, including payments under the Severance Agreement.

For a First Cause of Action
(Breach of Contract)

34. Without limiting the foregoing or the other allegations herein, Masters breached the express and implied terms of the Severance Agreement and his employment agreement by, *inter alia*:

(a) Conspiring to use Pizzarotti's confidential and proprietary information in direct violation of Masters' duties of loyalty and the obligations set forth in the Severance Agreement;

(b) Improperly accessing data belonging to Pizzarotti and misappropriating that data with the intention of injuring Pizzarotti's business relations;

(c) Actively planning to undermine Pizzarotti's relationships with the owner of the Project and other clients by violating confidentiality; and

(d) Using confidential information to assist a third-party in a claim adverse to Pizzarotti and Pizzarotti's business interests.

35. Plaintiff duly performed all of its obligations to defendant

36. Pizzarotti has, in good faith, made substantial payments to Masters pursuant to the Severance Agreement and the terms of his employment. However, on information and belief, as set forth herein, Masters has been in violation of that agreement since its inception.

37. By reason of the foregoing, Pizzarotti seeks revocation and termination of the Severance Agreement without further payments to Masters and return of all sums paid to Masters under the Severance Agreement.

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38. Furthermore, Pizzarotti seeks the return of all wages, benefits and bonuses, and any other amounts paid to Masters during any periods of Masters' employment when he was in violation of his responsibilities under the terms of his employment with Pizzarotti.

39. By reason of the foregoing, the sum of $10 million, or such other amount as may be determined at trial, is due and owing from defendant to plaintiff, with applicable interest thereon.

For a Second Cause of Action
(Computer Fraud and Abuse Act)

40. Masters, knowingly and with intent to injure Pizzarotti, accessed protected computers and email databases without authorization and obtained confidential and proprietary information.

41. Masters intentionally accessed protected computers and databases without authorization and as a result of such conduct caused damage and caused an interruption of Pizzarotti's operations by, *inter alia*, accessing confidential communications and passing them on to Xtreme.

42. As a result, Pizzarotti has incurred and will incur damages, including having to retain counsel, revising and reviewing its electronic access policies, developing security protocols for its database, and directing resources to address the problems caused by Masters' conduct.

43. By intentionally accessing computers and exceeding his authority, and by deliberately taking proprietary and confidential data, Masters has violated both the criminal and civil provisions of the Computer Fraud and Abuse Act (the "CFAA"), 18

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U.S.C. 1030 *et. seq*, and, as a result, Pizzarotti is entitled to applicable damages, attorneys' fees and costs, and injunctive relief.

44. Pizzarotti has no adequate remedy at law to defendant's ongoing misuse of plaintiff's confidential documents and information. Money damages alone will not, and cannot, compensate Pizzarotti for the loss of goodwill and business opportunities. Masters' actions have harmed and will continue to harm Pizzarotti's business relationships.

45. Masters' actions as set forth herein have caused damages well in excess of the CFAA statutory requirement of $5,000 in a one-year period.

46. Masters' continuing conduct of retaining and utilizing fraudulently obtained, confidential information demonstrates Masters' willingness to continue to engage in acts that violate the CFAA.

47. The injury to Pizzarotti is immediate and irreparable.

48. Pizzarotti has demonstrated that Masters, unless restrained, would continue to engage in conduct that is alleged herein by, among other conduct, retaining the fraudulently obtained, confidential information.

49. There is a likelihood that Pizzarotti will prevail on the merits of this action.

50. Should this Court grant injunctive relief to Pizzarotti, the burden on Masters would be slight compared to the injury to Pizzarotti if it is not granted. No injury to Masters would result from an order requiring him to comport his actions under the law and return and discontinue use of all misappropriated confidential and proprietary information.

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51. The granting of such an injunction will accomplish the objectives of Congress in enacting the CFAA.

52. In addition to injunctive relief, pursuant to the CFAA, and by reason of the foregoing, plaintiff is entitled to damages from defendant in an amount to be determined at trial, with applicable interest, attorney's fees, costs and disbursements.

For a Third Cause of Action
(Conversion)

53. Defendant's conduct as alleged herein has resulted in unlawful and wrongful assumption of control over, and conversion of, Pizzarotti's property and confidential information.

54. Pizzarotti has the right to recover possession of its property and confidential information.

55. Defendant has failed to return Pizzarotti's property and confidential information and has refused to discontinue any further use.

56. As a consequence of the foregoing conduct, Pizzarotti has been injured, for which it is entitled to recover damages from defendant in an amount to be determined at trial, together with applicable interest thereon, and punitive damages.

For a Fourth Cause of Action
(Breach of Fiduciary Duties)

57. Masters was employed by Pizzarotti in a position of trust and confidence.

58. Both during and after his employment with Pizzarotti, Masters owed certain fiduciary duties to Pizzarotti, including a duty of loyalty and honesty.

59. Masters was and is prohibited from acting in a disloyal manner, or in any way inconsistent with that trust relationship.

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60. Masters was bound to treat Pizzarotti's proprietary and confidential documentation and information as the lawful property of Pizzarotti, and to not disclose such information to third parties, or to use such information on his own account or on account of other third parties, firms or entities.

61. Notwithstanding these obligations and duties, and in violation thereof, Masters has engaged and continues to engage in, *inter alia*, disloyal and untrustworthy conduct by misappropriating or retaining Pizzarotti's confidential and proprietary documentation and information and attempting to unlawfully benefit from Pizzarotti's information.

62. Masters was paid wages, benefits, bonuses and other monies to which he is not entitled under the Faithless Servant Doctrine, and he is now obligated to return same to Pizzarotti.

63. Masters blatantly violated his duties by misusing Pizzarotti's confidential communications to assist third parties in making baseless claims thereby injuring Pizzarotti's business relationships.

64. By reason of the foregoing, the sum of $10 million, or such other amount as may be determined at trial, is due and owing from defendant to plaintiff, with applicable interest thereon, and punitive damages.

For a Fifth Cause of Action
(Misappropriation)

65. Defendant intentionally and wrongfully misappropriated Pizzarotti's property including, *inter alia*, its proprietary and confidential business and client information, for his benefit and to Pizzarotti's detriment.

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66. Pizzarotti took reasonable steps to protect and maintain the secrecy of its proprietary and confidential business and client information.

67. Defendant has failed to return Pizzarotti's property in violation of his agreements and applicable law.

68. By reason of the foregoing, the sum of $10 million, or such other amount as may be determined at trial, is due and owing from defendant to plaintiff, with applicable interest thereon.

For a Sixth Cause of Action
(Tortious Interference With Contract and with Prospective Clients)

69. Pizzarotti has an ongoing business interest in the successful completion of the Project. Furthermore, Pizzarotti has continuing business relationships with its clients within the State of New York and elsewhere in the United States.

70. Masters, during and subsequent to the time he was employed by Pizzarotti, had knowledge of such business relationships.

71. As set forth above, Defendant Masters actively conspired to, and did, intentionally and unjustifiably interfere with Pizzarotti's business relationships by, *inter alia*, (a) obtaining Pizzarotti's confidential client data; (b) using confidential data to aid Xtreme in asserting a baseless and inflated claim injurious to Pizzarotti's interests and injuries to Pizzarotti's clients; and (c) causing Pizzarotti to expend money and resources in responding to the Xtreme claim and the misuse of Pizzarotti's confidential information.

72. As a result of Defendant's unjustified and improper actions, Pizzarotti has been forced to commit resources to respond to Xtreme claim and has sustained a general loss of goodwill and reputation in the industry.

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73. Pizzarotti has suffered and continues to suffer damages as a result of Defendant's intentional interference with Pizzarotti's existing contracts and prospective business relationships.

74. By reason of the foregoing, the sum of $10 million, or such other amount as may be determined at trial, is due and owing from defendant to plaintiff, with applicable interest thereon.

For a Seventh Cause of Action
(Injunctive Relief)

75. Pizzarotti has suffered and continues to suffer irreparable harm as a result of Masters' improper actions in violation of his agreements with Pizzarotti and applicable law, which infringe upon Pizzarotti's legitimate business interests, including, but not limited to, protection of Pizzarotti's confidential documents and information and preservation of client goodwill.

76. Masters' improper actions constitute harm of a continuing nature for which Pizzarotti has no adequate remedy at law. The misappropriation or unauthorized use of Pizzarotti's proprietary business information cannot be compensated by a mere money judgment.

77. By reason of the foregoing, plaintiff is entitled to an injunction against defendant, and anyone acting as his agent or in concert with him, prohibiting him from using plaintiff's proprietary or confidential documents or information, and directing the immediate return of same.

WHEREFORE, plaintiff seeks judgment against defendant (a) on the first, fourth, fifth and sixth causes of action, in the sum of $10 million, or such other amount as may be determined at trial is due and owing from defendant to plaintiff, with applicable

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interest thereon (b) on the second and seventh causes of action, in the form of an injunction and applicable damages and costs in an amount to be determined, and (c) on the third cause of Action, in an amount to be determined at trial, with applicable interest thereon, and (d) attorney's fees, costs and disbursements, and such other relief as the Court determines is appropriate.

Dated: July 7, 2017

PECKAR & ABRAMSON, P.C.
Attorneys for Plaintiff

By:____________________

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41 Madison Avenue
New York, NY 10010
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Pizzarotti IBC, LLC - v. - Michael Masters

654476/2017

Assigned Judge: None Recorded

Documents Received on 07/12/2017 01:50 PM

Doc #	Document Type	Motion #
3	SUMMONS (PRE RJI) (AMENDED) Does not contain an SSN or CPI as defined in 202.5(e) or 206.5(e)	

Filing User

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E-mail Notifications

An e-mail notification regarding this filing has been sent to the following address(es) on 07/12/2017 01:50 PM:

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MONTE, PAUL G - pmonte@pecklaw.com

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Confirmation Notice

This is an automated response for Supreme Court / Court of Claims cases. The NYSCEF site has received your electronically filed document(s) for:

Pizzarotti IBC, LLC - v. - Michael Masters

654476/2017

Assigned Judge: None Recorded

Documents Received on 07/07/2017 10:21 AM

Doc #	Document Type	Motion #
2	COMPLAINT (AMENDED) Does not contain an SSN or CPI as defined in 202.5(e) or 206.5(e)	

Filing User

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